

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD M. GILMAN,

Plaintiff,

No. CIV S-04-0035 DFL KJM P

vs.

EDWARD S. ALAMEDIA, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed under 42 U.S.C. § 1983. By order filed November 1, 2004, plaintiff's complaint was dismissed with leave to file an amended complaint. Plaintiff has now filed an amended complaint.

Plaintiff's amended complaint states a cognizable claim for relief under 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the allegations of the amended complaint are proven, plaintiff has a reasonable opportunity to prevail on the merits of his Eighth Amendment claim against defendant Zhu. With respect to plaintiff's other claims, plaintiff's amended

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1 complaint fails to state a claim upon which relief can be granted.<sup>1</sup> Therefore, the court will order  
2 service of process only upon defendant Zhu.

3 In accordance with the above, IT IS HEREBY ORDERED that:

4 1. Service is appropriate for defendant Zhu.

5 2. The Clerk of the Court shall send plaintiff one USM-285 form, one summons,  
6 an instruction sheet and a copy of the amended complaint filed December 21, 2004.

7 3. Within thirty days from the date of this order, plaintiff shall complete the  
8 attached Notice of Submission of Documents and submit the following documents to the court:

9 a. The completed Notice of Submission of Documents;

10 b. One completed summons;

11 c. One completed USM-285 form; and

12 d. Two copies of the endorsed amended complaint filed December 21,  
13 2004.

14 4. Plaintiff need not attempt service on defendants and need not request waiver of  
15 service. Upon receipt of the above-described documents, the court will direct the United States  
16 Marshal to serve defendant Zhu under Federal Rule of Civil Procedure 4 without payment of  
17 costs.

18 DATED: May 19, 2005.

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20   
21 UNITED STATES MAGISTRATE JUDGE

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23 <sup>1</sup>  
gilm0035.1

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25 <sup>1</sup> Plaintiff asserts several state law claims. However, plaintiff fails to allege compliance  
26 with California's Tort Claims Act. See Cal. Gov't Code § 910; Mangold v. Cal. Pub. Utils. Comm'n, 67 F.3d. 1470, 1477 (9<sup>th</sup> Cir. 1995). Therefore, plaintiff cannot proceed on those claims.

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NOTICE OF SUBMISSION

Defendants.

OF DOCUMENTS

\_\_\_\_\_ /

Plaintiff hereby submits the following documents in compliance with the court's  
order filed \_\_\_\_\_:

\_\_\_\_\_ completed summons form

\_\_\_\_\_ completed USM-285 form

\_\_\_\_\_ copies of the \_\_\_\_\_  
Amended Complaint

DATED:

\_\_\_\_\_  
Plaintiff